

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

---

August 23, 2005

---

GSBCA 16639-RELO

In the Matter of MELINDA K. KITCHENS

Melinda K. Kitchens, Kewanee, IL, Claimant.

Scott Shevlin, Manager, Accounts Receivable and Travel, Finance and Accounting Division, Bureau of Reclamation, Department of the Interior, Denver, CO, appearing for Department of the Interior.

**HYATT**, Board Judge.

In June 2002, claimant, Melinda Kitchens, accepted a position as a supervisory recreation planner with the Bureau of Reclamation, Department of the Interior, in Canyon Ferry, Montana. This was her first post of duty with the Federal Government. She relocated from Dunlop, Illinois, to Helena, Montana, in order to accept this position, and the agency reimbursed her allowable relocation costs.

Ms. Kitchens signed the mandatory employment agreement obligating her to remain in federal service for at least twelve months. The agreement provided that in the event she failed to complete her obligation to remain employed by the Government for at least twelve months, she would be required to repay the relocation expenses incurred by the Government to move her to Montana. The one exception to this requirement was that if she was separated from the service for "reasons beyond [her] control and acceptable to the Bureau of Reclamation prior to the completion of the 12-month period of service, the cost of travel and transportation as agreed to above will be at Government expense and not recoverable from me."

Ms. Kitchens moved and reported to her duty station in Montana, where she encountered difficulties with her immediate supervisor at the outset. The record reflects that her duties did not match her expectations or the position description, that her supervisor subjected her to gender-based degrading comments and other violations of agency policies, and that her employment conditions were generally unjust and unacceptable. Ms. Kitchens remained in the position for five months, frequently seeking the intervention of higher level supervisors, and left when she could no longer tolerate the situation. After Ms. Kitchens resigned, the agency conducted an investigation and, eventually, after several other replacement employees also left the position shortly after accepting it, moved the position to Billings, Montana, and eliminated the supervisory role of the individual in question.

When Ms. Kitchens resigned prior to completing a full year of federal service, the Bureau sent her a bill of collection in the amount of \$7957.21, representing the cost of her relocation to Montana. Ms. Kitchens questioned whether it was appropriate to expect her to reimburse the agency under these circumstances. According to Ms. Kitchens, after investigating this matter, one manager in the Bureau of Reclamation recommended that the Bureau drop altogether its efforts to collect the costs of relocating Ms. Kitchens to Montana and another Bureau manager who participated in an investigation of the matter recommended that the debt be pro-rated, to allow for the fact that she had completed five months of service. Ultimately, the Bureau agreed to reduce, or partially waive, Ms. Kitchens' bill of collection to the amount of \$4294.71.

Ms. Kitchens asked to appeal this decision, reasoning that since the conditions of her employment were intolerable the agency should not expect her to repay any of these expenses. The agency forwarded her request for relief to the Department of the Interior's Office of Hearings and Appeals (OHA). OHA, in addressing the request for relief, explained that the Department has vested in it the authority to waive claims for the collection from employees of erroneous payments that exceed the amount of \$1500 under 5 U.S.C. § 5584 (2000). OHA further explained that the debt in issue here is not the type of debt that this waiver authority covers. Thus, OHA was not able to grant claimant a waiver relieving her of the obligation to repay this debt. In a reconsideration decision issued after Ms. Kitchens provided OHA with a detailed explanation of her circumstances, OHA further observed:

If, as Ms. Kitchens states, the amount should not be collected because she left the Agency for reasons beyond her control and acceptable to the Bureau of Reclamation, then it is within the authority of the Bureau of Reclamation to determine that no debt is owed or to reduce the amount of the debt. This Office has the authority to waive collection of erroneous overpayments but does not have authority to waive collection of debts that do not

arise from erroneous overpayments. To the extent that Ms. Kitchens asserts that the Bureau of Reclamation concurs with her assertion that she should not be required to repay all or a portion of the amount paid to her under the employment agreement, that is a matter she should address to the appropriate officials at the Bureau of Reclamation.

*Melinda K. Kitchens*, Docket D 2004-57R, 30 OHA 163, 166 (Mar. 11, 2005).

Ms. Kitchens has asked the Board to review the agency's efforts to collect this debt. In its response to Ms. Kitchens' claim, the agency states that it agrees with the facts as she presents them. The agency still appears to characterize this matter purely as a request for the waiver of a debt, however, as it has received a legal opinion from the Department's Office of the Solicitor, in another case, adopting the position that if an employee does not fulfill the terms of a service agreement, the agency must establish a debt in the amount of any relocation costs that have been reimbursed, and that the debt may only then be waived if the early departure was for reasons beyond the employee's control that are acceptable to the agency. Further, the agency tells us, under agency rules, the Bureau may deny a waiver of debt in any amount and may only approve a waiver up to the amount of \$1500. Any amount greater than \$1500 must be forwarded to the Department's Office of Hearings and Appeals for consideration. Thus, at this point, the agency believes that it was required to take the collection actions that it took in this case.

### Discussion

By statute, the Government may pay the travel and transportation expenses of a new appointee only if the employee agrees in writing to remain in federal service for twelve months after the appointment unless separated for reasons beyond his or her control that are acceptable to the agency concerned. 5 U.S.C. § 5724(i) (2000). The pertinent Federal Travel Regulation (FTR) provision, in effect at the time Ms. Kitchens was appointed to her position with the Federal Government and relocated to Montana, similarly provided that if she violated her service agreement "other than for reasons beyond [her] control and which must be accepted by [her] agency," she would have "incurred a debt due to the Government" and would be required to "reimburse all costs that [the] agency ha[d] paid towards [her] relocation expenses." 41 CFR 302-2.14 (2002). The service agreement Ms. Kitchens signed also contained language to this effect.

The agency has misconstrued the conditions set forth in the statutory provision as implemented by the FTR and the written service agreement signed by the employee. There is no automatic requirement that the agency establish and collect a debt in the amount of the

relocation costs should an employee fail to complete a full twelve months of service after moving at the Government's expense. The agency may exercise considerable discretion in deciding whether to release an employee from this obligation. *See Jack Goldstein*, GSBCA 16647-RELO (Aug. 18, 2005); *Amy Oestreich*, GSBCA 16489-RELO, 05-1 BCA ¶ 32,852 (2004). In *Goldstein* and in *Oestreich*, the employees complained of strained or difficult working conditions, but did not establish that these conditions were significant and beyond their control and did not pursue available alternatives offered by their agencies, instead resigning permanently to pursue an opportunity outside the Federal Government (in the case of Mr. Goldstein) or temporarily, to return to the Government at another location after a break in service (in the case of Ms. Oestreich). Thus, the agencies determined that workplace difficulties were not the primary issue and the employees made the choices to resign from federal service primarily for their personal convenience. In those circumstances, the agencies properly required repayment of the relocation expenses.

It does not appear that the Bureau has recognized its duty to exercise its discretion in this matter. As OHA has stated, this is not an instance of an erroneous overpayment; the statute and implementing regulation permit the agency to decide, taking into account the relevant facts and circumstances, when to recoup the costs of relocating an employee who does not fulfill his or her service obligation. The agency states that it agrees with Ms. Kitchens' rendition of the facts. She has essentially explained that the circumstances precipitating her early departure from federal service were beyond her control and the agency has not articulated any disagreement with this stance nor has it explained why it considers these reasons not to be acceptable to it. Although Ms. Kitchens' statements are restrained and fairly discreet, it is evident that the working environment to which Ms. Kitchens was subjected at Canyon River was untenable and that the agency, although well aware of the problems, did not offer her a meaningful alternative to resigning from federal service so as to avoid the necessity to "breach" the service agreement.

On these facts, it would be an abuse of discretion for the Bureau to do anything other than to determine that the employee should be released from the obligations of her service agreement. The Bureau has no justification for collecting the money in question from Ms. Kitchens.

---

CATHERINE B. HYATT  
Board Judge